IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2405 OF 2005

Municipal Corporation of
Greater Mumbai. ...Petitioner

Versus

Vrandvanlal Goverdhanlal & Anr. ...Respondents

Shri A.J.Bhor for the Petitioner.
Shri J.B.Patel for Respondent No.1.
Shri A.H.Palekar A.G.P for Respondent No.2-MHADA

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th JANUARY, 2006.

P.C.

1. Heard Shri Bhor appearing for the petitioner-Municipal Corporation and Shri Patel appearing for respondent No.1-Orig.Plaintiff as well as Shri Palekar A.G.P appearing for respondent No.2.

2. Rule. Returnable forthwith by consent. Respondents waive service.

3. The petitioner Corporation is a defendant in the Suit filed by the original plaintiff in the City Civil Court at Mumbai. The petitioner was served with the Writ of Summons, but, could not place its Written Statement on record. When it noticed that the Court was proceeding Exparte, an application was made on 19th October, 2004 pointing out that the Written Statement could not be filed earlier because the Municipal Corporation was under an impression that the monies are being collected for and on behalf of the Maharashtra Housing and Area Development Authority (MHADA) and, therefore, it would be for MHADA to defend the entire action. However, subsequently, it was discovered that the plaint averment was that the plaintiff is also aggrieved by the Warrant of Attachment levied and, therefore, plea pertaining to same having been incorporated the Written Statement is necessitated. This application of the

petitioner-Corporation has been rejected by the impugned order.

4. The Court below has proceeded on the basis that Code of Civil Procedure as amended in 2002 postulates the Written Statement being filed within a period of 90 days from the date of receipt of Writ of Summons or such other date as may be extended, but, not 30 days beyond the period of 90 days. In the present case the Writ of Summons in a Suit filed in the year 2000 having been served much earlier, Written Statement is not filed. Therefore, the application is dismissed.

5. In my view, the Court below committed an error in holding that it has no power to enlarge time beyond the period prescribed in Order VIII Rule 1 of the Code of Civil Procedure as amended in the year 2002. In a recent decision of the Hon’ble Supreme Court reported in **AIR 2005 SC**

3353 (Salem Advocate Bar Association V/s Union of India), it is held by the Hon'ble Supreme Court that the provisions pertaining to filing of Written Statement are directory and it is open for the Court to enlarge the time when satisfactory explanation for the delay is furnished. In the instant case, the Municipal Corporation of Greater Mumbai is a public body and considering that recovery of repair-cess and taxes is involved, it is desirable and in the interest of justice that the petitioner's explanation should have been accepted. At the same time, the petitioner could have been directed to compensate respondent No.1-Orig.plaintiff by payment of costs.

6. In the larger interest of justice, the order of the trial Court requires to be set-aside and is accordingly set-aside. The application preferred by the petitioner to take Written Statement on record is granted. Shri Bhor states

that the Written Statement is already affirmed and would be filed within a period of 15 days from today. The trial Court to accept the said Written Statement, if filed, within the aforesaid period on payment of Rs.5000/- (Rs.Five Thousand Only) as costs in each of the Suits, as condition precedent, to the plaintiff. Rule is made absolute to the above extent with no order as to costs.

(S.C.DHARMADHIKARI, J)